TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1923

No. [redacted] 158

WARREN MYERS AND BILL SUMMERS, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED NOVEMBER [redacted], 1923.

(29,364)

(29,264)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 714.

WARREN MYERS AND BILL SUMMERS, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 14, 1923.

a

Citation and Service.

(Filed Sept. 16, 1922.)

UNITED STATES OF AMERICA, *sct:*

To United States of America, Charles C. Madison, United States District Attorney for the Western District of Missouri, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States of America, at the City of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the Western Division of the Western District of Missouri, wherein United States of America is Defendant in Error and Bill Summers and Warren Myers are Plaintiffs in Error. That is to say said Bill Summers and Warren Myers are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Arba S. VanValkenburgh, Judge of the District Court of the United States for the Western Division of the Western District of Missouri, this 16th day of September in the year of our Lord one thousand nine hundred twenty two. Arba S. VanValkenburgh, Judge.

UNITED STATES OF AMERICA,
Western Division of the
Western District of Missouri, sct:

I hereby acknowledge due service of the within Citation this 16th day of September A. D. 1922. Charles C. Madison, Attorney for Defendant in Error.

[Endorsement omitted.]

b

Writ of Error.

(Filed Sept. 16, 1922.)

UNITED STATES OF AMERICA, *sct:*

The President of the United States of America to the Honorable Judges of the District Court of the United States for the Western Division of the Western District of Missouri, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, at the April Term, 1922, thereof, between The United States

of America and Bill Summers and Warren Myers, a manifest error hath happened, to the great damage of the said Bill Summers and Warren Myers, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the said record and proceedings aforesaid at the City of Washington, and filed in the office of the Clerk of the Supreme Court of the United States of America, on or before the 16th day of October, 1922, to the end that the record and proceedings aforesaid being inspected, the Supreme Court of the United States of America may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, and the seal of said District Court.

Issued at office in Kansas City, Mo., this 16th day of September, in the year of our Lord one thousand nine hundred twenty-two. Edwin R. Durham, Clerk. [Seal of the United States District Court, Western Division, Western District of Missouri.]

Allowed by Arba S. VanValkenburgh, District Judge.

UNITED STATES OF AMERICA,
Western Division of the
Western District of Missouri, sct:

In obedience to the command of the within Writ, I herewith transmit to the United States Supreme Court a duly certified transcript of the record and proceedings in the within entitled case, and with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said District Court of the United States for the Western Division of the Western District of Missouri.

Issued at office in Kansas City, this 6th day of October A. D. 1922. Edwin R. Durham, Clerk. [Seal of the United States District Court, Western Division, Western District of Missouri.]

[Endorsement omitted.]

1 UNITED STATES OF AMERICA, *sct:*

Be it remembered, that heretofore, to-wit, at the regular April Term of the United States District Court for the Western Division of the Western District of Missouri, and on the 8th day of September, 1922, the following entry appears of record, to-wit:

5131.

UNITED STATES OF AMERICA, Plaintiff,

vs.

WARREN MYERS and BILL SUMMERS, Defendants.

Order.

(Filed September 8, 1922.)

This day, upon application of the United States Attorney, it is ordered by the court that leave be granted to file amended information herein.

Thereupon comes Charles C. Madison, United States Attorney and files amended information against Warren Myers and Bill Summers.

2 [Title omitted.]

Amended Information.

Comes now Charles C. Madison, United States Attorney for the Western District of Missouri, and upon leave of court, first had and obtained, files this amended Information, and upon his official oath and upon the affidavits of Sim. P. Walker and William L. Weiss, which are hereto attached marked Exhibits A and B respectively, gives the court to understand and be informed that on the 22nd day of July, 1922, in a certain cause pending in the United States District Court for the Western Division of the Western District of Missouri, entitled "St. Louis, San Francisco Railway Company, Complainant, versus International Association of Mechinists, et al., Defendants, In equity No. 372", this Honorable Court issued an Injunction against defendants in which injunction it is lawfully ordered that the said defendants in the above entitled cause and all persons engaged in strike formerly employed by complainant and all persons assisting or aiding them or acting, combining, conspiring, agreeing or arranging with them and all other persons within the State of Missouri, be and are hereby ordered and enjoined as follows:

Not to picket the buildings or property of the complainant, or the streets, alleys, paths or roads leading to such buildings or property, except that not to exceed two representatives of all said defendants may be maintained at each regular and established entrance to complainant's buildings and property for the sole purpose
3 of announcing the strike and peaceably persuading employees and would-be employees of complainant not to work for complainant, but such persuasion shall not be by profane, abusive, libeous or threatening epithets of threatened injury, and shall not obstruct any unwilling listener or importunately follow his steps.

Not to loiter, assemble, congregate, or trespass upon, about or

near the shops, roundhouse, depots, tracks, yards or other buildings or property of complainant, or elsewhere in the State of Missouri, thereby intimidating, threatening, coercing, or inducing, by the presence of numbers, complainant's employees or would-be employees so as to tend to prevent them from working for the complainant.

Not to interfere in any manner with the employees of the complainant in going to and from their daily work or in remaining at such work, except by such peaceful persuasion as announcing the so-called strike and requesting and persuading employees and would-be employees not to work for the complainant, but such persuasion shall not be by profane, abusive, libelous or threatening epithets or threatened injury and shall not obstruct any unwilling listener or importunately follow his steps.

Not to interfere in any manner with persons desiring to go into or upon the buildings or property of complainant for the purpose of working for the complainant, except by peaceful persuasion.

Not to make any threats or suggestions of danger, violence or personal injury of any kind against the employees or would-be employees of complainant, or the members of their families, and not to commit any act of force or violence or any injury against any such person or the members of his family or his property.

Not to interfere by violence or threats of violence in any manner with any person desiring to be employed by the complainant.

4 That all of the provisions of said injunction were lawful orders, and lawfully made.

That thereafter service of said injunction order was made by publication as follows:

A copy thereof was published on or about the 25th day of July, 1922, in the Kansas City Times, the Kansas City Star, and the Kansas City Journal, in Kansas City, Missouri, and in the Springfield Leader, and the Springfield Republican, in Springfield, Missouri, and The Globe-Democrat at Saint Louis, Missouri, and The Monett Times, at Monett, Missouri, and on the 26th day of July, 1922, copies of said injunction order were posted at public places in close proximity to each regular and established place of entrance to each of complainant's repair shops in the state of Missouri, and at and upon the complainant's buildings and properties in Monett, Missouri, and that on the 27th day of July, 1922, the said Warren Myers and Bill Summers, whose true first names are to affiant unknown, except as herein stated, had actual knowledge of said order of injunction and of its provisions therein contained and that on said 27th day of July, 1922, as aforesaid, the aforesaid injunctive order of this court was in full force and effect and that on the said 27th day of July, 1922, at or near the St. Louis, San Francisco roundhouse, the same being part of the shops of the said company and the property belonging to said company and included within the provisions of said injunctive order and at a point near the entrance thereof in Monett, Barry County, Missouri, and within the Western District of Missouri, and within the jurisdiction of this

court, the said Warren Myers aiding and assisting Bill Summers, and Bill Summers being at said time a striking employee and a member of one of the defendant orders enjoined, then and there being, and aiding, assisting, combining, conspiring and agreeing with the persons so enjoined, as aforesaid, did then and there unlawfully, wilfully, knowingly and contemptuously commit
5 contempt against the dignity and authority of this Honorable court and with intent then and there to interrupt and obstruct the free passage of the United States mails and interstate commerce and to then and there disobey, resist and violate the lawful orders and decree of this court as contained in said injunctive order aforesaid and wilfully obstruct its lawful processes by acts and conduct as follows, to-wit:

That the said defendants, together with other persons unknown at the said time and place aforesaid did unlawfully, knowingly, wilfully and contemptuously congregate and loiter, and did then and there interfere with, stop and detain the said Sim P. Walker and William L. Weiss, employees of the said railway company in going from their daily work and did assult, beat, bruise and maim the said Sim P. Walker and William L. Weiss, and did further curse and abuse the said Sim P. Walker and William L. Weiss and by threats and coercion, did attempt to intimidate and influence the said Sim P. Walker and William L. Weiss to leave the employment of the said St. Louis, San Francisco Railway Company and to cease to work for said company, with intent to disobey, resist and violate the lawful orders and injunctive decree of this court, contrary to the authority and dignity of the court and the laws of the United States.

Wherefore, the said Charles C. Madison, United States Attorney as aforesaid, prays the court for an attachment forthwith against the said Warren Myers and Bill Summers, and thereunder they be brought before the court to show cause, if any they have, why they or either of them should not be punished as for contempt of this court, for and on account of the matters and things as above set forth and be fined or imprisoned therefor. Chas. C. Madison, United States Attorney.

6 United States of America,
Western Division, Western District of Missouri, ss:

Charles C. Madison, United States Attorney, being duly sworn upon his oath says that the allegations and averments in the foregoing Information are true and correct, except as to those matters which are stated on information and belief, and as to those matters he believes them to be true. Chas. C. Madison.

Subscribed and sworn to before me this 8th day of September, 1922. Edwin R. Durham, Clerk, by A. Vinick, Deputy. (Seal.)

7 Kansas City, Mo., Aug. 9, 1922.

On July 27, 1922, about 7:30 P. M.

He was just leaving the Frisco yards from work, when This man Meyers stoped me and ask me if I was Mr. Walker I told him I was, he ask me if I was going to the Carmens meeting that night I told him that I thought not, about this time a care drove up and there was six men in this car and they commanded me to get in this car, the men got out and they picked me up bodley and through me in this car.

Through me between the seats and stradled me and drove me about fifteen miles in the country.

The injuries I received in this assault was fracturs of the ribs, choked me till I could not swallow, after driving around for about three quarters of a hour I found that there was another man in this car that they assaulted and he told me his name was Weiss.

This man was picked out of about six men by me there was also W. Summers in this crowd who assaulted me which I have possively identified. Sim P. Walker. G. D. Crowther, Edgar Wilson, E. E. McGuire, Witnesses.

Subscribed and sworn to before me this 9th day of August, 1922. E. A. O'Dwyer, Notary Public. (Seal.) Com. Ex. Mar. 6, 1924. Witnesses: D. S. Land. T. F. Plumlee.

8 *Copy Statement.*

Springfield, Mo., July 28, 1922.

Mr. H. L. Worman:

I had been staying at the Broadway Hotel, Monett. Left the roundhouse yesterday about 7:00 P. M., was off of the Company property, just west of the telegraph office on Broadway, when a gang of strikers stopped me and started an argument, stating that I was "Scabbing" on them, etc. I tried to explain to them my situation down there; and they tried to get me to agree that I quit work. get on a train and go away. I refused to do this. I had explained my situation to a committee when I first went to Monett. They then told me if I worked there I would have to stay down at the roundhouse with the rest of the "scabs". I also refused to agree to this. We couldn't get anywhere. They then started up to the hotel with me and when we got past the first building they overpowered me, shoved me into a car and drove me out in the country. On the way out there they stopped an old man who was a train inspector who had gone back to work there, overpowered him and threw him in the car. I don't know how far they drove me as I was blind-folded, but I think it must have been about ten or twelve miles, at the end of which they took us out of the car. They argued with the old man a while and turned him loose, then they came to me and started tearing my clothes off and robbed me of all my money, which was about forty dollars. I started to put up a scrap and they threw me

with my face down in the back of the car and the whole gang piled on top of me and drove on. I suppose about five or six miles. They then took me out of the car, tore my clothes off and threw me and my clothes in the ditch, got in the car and went off. I got up, put on my clothes and started to walking. A man in a car came along and picked me up and took me to within a half of a mile of Aurora, I believe it was. I got on number 6 and came to Springfield.

Before this—I had been sick Monday and Tuesday. A committee of strikers went up to the Broadway Hotel and tried to get the manager to throw me out. He told them that he would see me about it first. The committee was there three or four times. I explained to him what I was doing and he told me that it was all right that I could stay there. They seemed to object to my knocking fires, which I was not doing but was running the supply room. I had been helping the hostler and running the supply room all the time I was down there. Wm. L. Weiss.

Witnesses to the reading and signing of the above: Geo. M. Reid, Deputy U. S. Marshal. L. F. McCormick, Deputy U. S. Marshal. (Seal.)

Subscribed and sworn to before me this 16 day of August, 1922. A. L. Arnold, United States Commissioner.

9 [Title omitted.]

Trial of Cause.

[September 14, 1922.]

This day come the defendants by their counsel and file plea to the jurisdiction of the court, which is taken up and considered, and the court after hearing the arguments of counsel and being fully advised in the premises doth overrule the same, to which ruling of the court the defendants, by their attorney, at the time except.

Come now the defendants, by their counsel, and file reply herein, also file demurrer to information, which is taken up and the court after hearing the arguments of counsel, and being fully advised in the premises doth overrule the same, to which ruling of the court the defendants, by their attorney, at the time except.

Upon application of the United States Attorney it is ordered by the court that leave be granted to amend the information herein by interlineation.

Now comes Charles C. Madison, United States Attorney, also come the defendants in their own proper persons and with counsel and waive formal arraignment and for plea say they are not guilty as charged in the information herein.

Thereupon both parties having answered ready for trial, and a jury having been ordered comes as follows, to-wit: O. F. Young, J. W. Alder, F. E. Deshazo, F. F. Fisher, G. L. Hall, Thomas Johnson, F. W. Mann, D. Sharp, Ben. T. Sams, Hy Weithamp, Jim Anderson and Nic F. Arens, twelve good and lawful men of the

Western Division of the Western District of Missouri, who were duly empaneled and sworn to well and truly try the issues joined.

10 Thereupon the government presents its testimony and rests, whereupon the defense presents its testimony, at its conclusion the government's testimony is heard in rebuttal and the hour of adjournment having arrived further proceedings are postponed until nine thirty o'clock tomorrow morning.

11 [Title omitted.]

Plea to Jurisdiction.

[Filed September 14, 1922.]

Now comes the above named respondent, and shows the Court that this Court is without jurisdiction to hear and determine this case in Kansas City, for the reason that the information filed herein shows that the alleged offense set forth and charged in said information is charged to have been committed in the County of Barry in the State of Missouri, which county is included in the territorial boundaries of the Southwestern (Joplin) Division of the United States Court for the Western District of Missouri; that by reason thereof the offense charged in the information filed in this case is triable at Joplin, and that this Court sitting within and for the Kansas City Division of the Western District of the State of Missouri is without jurisdiction to hear and determine the same.

This respondent therefore prays that this case may be abated as being without the jurisdiction of this Court; or, should the Court hold that this is not ground for abatement, then that this case be transferred to the city of Joplin to be tried within the territorial limits within which the offense is alleged to have been committed. Sizer & Gardner and Allyn Smith, Attorneys for Respondent.

12 [Title omitted.]

Verdict.

[Filed September 15, 1922.]

This day comes Charles C. Madison, United States Attorney, also come the defendants in their own proper persons and with their counsel, when comes the jury into open court and all answering present the trial is again proceeded with, and after hearing the argument of counsel and the instructions of the court the jury retire to consider of its verdicts.

Now comes the jury into open court with the following verdicts, to-wit:

We, the jury, find the defendant Warren Myers guilty as charged in the information herein. F. W. Mann, Foreman.

We, the jury, find the defendant Bill Summers guilty as charged in the information herein. F. W. Mann, Foreman.

Thereupon it is ordered by the court that the defendants be remanded into the custody of the United States Marshal pending further proceedings.

13 [Title omitted.]

Minute Entries.

[Filed September 16, 1922.]

This day comes Charles C. Madison, United States Attorney, also come the defendants in their own proper persons and with their counsel, and file motion for new trial herein, the same is argued and submitted to the court and the court being fully advised in the premises doth overrule the same, to which ruling of the court said defendants at the time except.

Thereupon the defendants file a motion in arrest of judgment, the same is taken up and considered by the court and the court after hearing the arguments of counsel and being fully advised in the premises doth overrule the same, to which action and ruling of the court the defendants at the time except.

And it appearing to the court that the said defendants were found guilty as charged in the information herein, by a jury on September 15th, 1922, and the United States Attorney having moved that sentence now be pronounced upon said defendants, said defendants were called upon to state reasons, if any they have, why sentence should not now be pronounced upon them, and none being stated and the court, being fully advised in the premises, fixes the punishment of the said defendants Warren Myers and Bill Summers at imprisonment in the Johnson County, Missouri, jail at Warrensburg, for a period of six months from this date and that they pay a fine of one thousand dollars each, together with the costs of this action, and that commitments issue accordingly.

It is ordered by the court that the bond for appeal for each defendant be fixed in the sum of five thousand dollars.

14 Now come the defendants Warren Myers and Bill Summers, by their attorney, and file their petition for writ of error, together with their assignment of errors, which petition is duly sustained and a writ of error allowed to the Supreme Court of the United States.

Now comes Warren Myers and presents his bond for appeal in the sum of five thousand dollars, signed by himself as principal and by J. E. Houston as surety, which said bond is approved and ordered to act as a supersedeas herein and ordered filed and made a part of the record.

Now comes Bill Summers and presents his bond for appeal in the sum of five thousand dollars, signed by himself as principal and by J. E. Houston as surety, which bond is approved and ordered to act as a supersedeas herein and ordered filed and made a part of the record.

Whereupon citation is duly issued and signed by the court ad-

monishing the United States of America to be and appear before the Supreme Court of the United States at the City of Washington, D. C. thirty days from and after the day said citation bears date.

Now come said defendants and file said Citation, service of which has been duly acknowledged by the United States District Attorney.

And now come the said defendants, by their attorney, and file præcipe for transcript herein.

15 [Title omitted.]

Motion for New Trial.

Now comes the above named defendants, and move the Court to grant them a new trial and hearing, for that the Court erred in refusing and overruling the application and demand of these defendants to transfer this case to the Southwestern Division of this District for trial as this Court sitting within this Division is without jurisdiction to hear the charge alleged against them in the information in this case. Sizer & Gardner and Allyn Smith, Attorneys for Defendants.

16 [Title omitted.]

Motion in Arrest of Judgment.

Now comes the respondent, Warren Myers, and moves the Court to arrest the judgment herein for the following reasons, to-wit:

The Court had no jurisdiction to hear and determine this cause, for that the information filed herein shows the offense to have been committed in the Joplin (Southwestern) Division of the Western District of the State of Missouri, and this Court was without jurisdiction to try said cause at Kansas City, outside the territorial limits of said Division. Sizer & Gardner and Allyn Smith, Attorneys for Respondent.

17 [Title omitted.]

Petition for Writ of Error.

The above named, George Myers, Respondent in the above entitled case, feeling aggrieved by the judgment and sentence of the Court rendered and entered in the above entitled cause on the 16th day of August, 1922, does hereby pray a Writ of Error from said judgment to the Supreme Court of the United States of America for the reasons set forth in the assignments of error filed herein; and he prays that his Writ of Error be allowed and that citation be issued as provided by law; that a transcript of the record, proceedings and documents upon which said sentence and judgment were based, duly authenticated, be sent to the Supreme Court of the United States of America, under the rules of such Court in such cases made and provided.

And your petitioner, the appellant herein, further prays that the oper order be made relating to bail pending said Writ of Error as quired by law. Sizer & Gardner and Allyn Smith, Attorneys for ppellant.

Allowed Sept. 16/22. Arba S. Van Valkenburgh, Judge.

[Title omitted.]

Assignment of Errors.

Now comes the above named Bill Summers and Warren Myers nd file the following assignments of error upon which they will rely n the prosecution of the appeal in the above entitled cause from the dgment and sentence of this Honorable Court on the 16th day of eptember, 1922.

1. The court erred in overruling the plea to the jurisdiction of his court, said plea being in effect that whereas the information led herein shows that the alleged offense set forth and charged in he said information is charged to have been committed in the ounty of Barry, and state of Missouri, which county is within the oundaries of the Southwestern (Joplin) Division of the United tates District Court for the Western District of Missouri, and that y reason thereof, the offense charged in this information is triable n Joplin, and this court, sitting in and for the Kansas City division f the Western District of the State of Missouri, is without jurisdic- ion to hear and determine the same, to the overruling of which lea to the jurisdiction, the defendants and each of them duly ex- epted and caused their exceptions to be noted of record.

2. The said United States District Court for the Western District f Missouri sitting at Kansas City erred in overruling a motion for a new trial filed by these appellants and respondents from the judgment in this case pronounced, said motion for a new trial being on the ground that this Honorable Court erred in refusing and over- ruling the application, and demand of these defendants to 19 transfer this case to the Southwestern Division of this Dis- trict for trial, as this court sitting within this division is without jurisdiction to hear the charge alleged against them in the information in this case.

3. That the United States District Court for the Western District of Missouri, sitting at Kansas City, erred in overruling by motion in arrest of judgment filed in this court, said motion in arrest of judgment being to the effect that this Honorable Court had no juris- diction to hear and determine this cause or that the information filed herein shows the offense to have been committed in the county of Barry and state of Missouri, which said county is not within the Western Division of the Western District of Missouri, and that this court is without jurisdiction to try said cause at Kansas City, outside the territory and limits of said division.

Wherefore, these respondents and each and both of them pray that the sentence and judgment be reversed and that the said United

States District Court within and for the Western Division of the Western District, sitting at Kansas City, be ordered to enter judgment reversing the decision of the said United States District Court for the Western District of Missouri, sitting at Kansas City, in said cause. Sizer & Gardner and Allyn Smith, Attorneys for Plaintiff in Error, the respondents.

20 [Title omitted.]

Bond on Writ of Error.

Know all men by these presents:

That we, Warren Myers as principal, and J. E. Houston, as surety, are held and firmly bound unto the United States of America in the full and just sum of Five Thousand Dollars ($5,000.00) to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 16th day of September in the year of our Lord, One Thousand Nine Hundred and Twenty-two.

Whereas, lately, September 16, 1922, before the Honorable District Court, sitting within and for the Western District of Missouri at Kansas City, in a suit pending between the United States of America, plaintiff, and Bill Summers and Warren Myers, defendants, a judgment and sentence was rendered against the said Warren Myers, and the said Warren Myers has obtained a Writ of Error from the United States Circuit Court of Appeals for the Eighth Circuit to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the date of said citation, which citation has been duly served.

21 Now, the condition of the above obligation is such that if the said Warren Myers shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Eighth Circuit on such day or days as may be appointed for the hearing of said cause in said Court and prosecute his said writ of error, and shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Eighth Circuit in said cause, and shall pay any fine and costs imposed by the judgment of the District Court against him, and shall surrender himself in execution of the judgment and sentence appealed from as said Court may direct if the judgment and sentence against him shall be affirmed or the writ of error or appeal is dismissed; and if he shall appear for trial in the District Court of the United States for the Western Division of the Western District of Missouri on such day or days as may be appointed for a retrial by said District Court and abide by and obey all orders made by said Court provided the judgment and sentence

against him shall be reversed by the United States Circuit Court of Appeals for the Eighth Circuit; then the above obligation to be void, otherwise to remain in full force, virtue and effect. Warren Myers. J. E. Houston.

Approved Sept. 16/22. Arba S. Van Valkenburgh, Judge.

22 [Title omitted.]

Bond on Writ of Error.

Know all men by these presents:

That we, Bill Summers as principal, and J. E. Houston, as surety, are held and firmly bound unto the United States of America in the full and just sum of Five Thousand Dollars ($5,000.00), to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 16th day of September, in the year of our Lord, One Thousand Nine Hundred and Twenty-two.

Whereas, lately, September 16, 1922, before the Honorable District Court, sitting within and for the Western District of Missouri at Kansas City, in a suit pending between the United States of America, plaintiff, and Bill Summers and Warren Myers, defendants, a judgment and sentence was rendered against the said Bill Summers, and the said Bill Summers has obtained a Writ of Error from the United States Circuit Court of Appeals for the Eighth Circuit to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the date of said citation, which citation has been duly served.

23 Now, the condition of the above obligation is such that if the said Bill Summers shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Eighth Circuit on such day or days as may be appointed for the hearing of said cause in said Court and prosecute his said writ of error, and shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Eighth Circuit in said cause, and shall pay any fine and costs imposed by the judgment of the District Court against him, and shall surrender himself in execution of the judgment and sentence appealed from as said Court may direct, if the judgment and sentence against him shall be affirmed or the writ of error or appeal is dismissed; and if he shall appear for trial in the District Court of the United States for the Western Division of the Western District of Missouri on such day or days as may be appointed for a retrial by said District Court and abide by and obey all orders made by said Court provided the judgment and sentence against him shall be reversed by the United States Circuit Court of

Appeals for the Eighth Circuit; then the above obligation to be void, otherwise to remain in full force, virtue and effect. Bill Summers. J. E. Houston.

Approved Sept. 16/22. Arba S. Van Valkenburgh, Judge.

24 [Title omitted.]

Præcipe for Transcript.

The Clerk in preparing transcript for transmission to the Supreme Court of the United States will include in said transcript the following papers:

Information.
Plea to the Jurisdiction.
Motion for new trial.
Motion in arrest of judgment.
The Journal entries relative to the ruling and exceptions on each of these motions and plea.
The Journal entry of judgment.
Petition for Writ of Error.
Writ of Error and Citation.
Assignments of Error.
Bond in appeal.
Sizer & Gardner and Allyn Smith, Attorneys for Plaintiff in Error.

24*a* [Title omitted.]

Bond on Writ of Error.

Know all men by these presents:

That we, Warren Myers as principal, and J. E. Houston as surety, are held and firmly bound unto the United States of America in the full and just sum of Five Thousand Dollars to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 16th day of September, in the year of our Lord, One Thousand Nine Hundred and Twenty-two.

Whereas, lately, September 16, 1922, before the Honorable District Court, sitting within and for the Western District of Missouri at Kansas City, in a suit pending between the United States of America, plaintiff, and Bill Summers and Warren Myers, defendants, a judgment and sentence was rendered against the said Warren Myers, and the said Warren Myers has obtained a Writ of Error from the United States Supreme Court to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing the United States of America to be and appear in the United States Supreme Court thirty

days from and after the date of said citation, which citation has been duly served.

Now, the condition of the above obligation is such that if the said Warren Myers shall appear either in person or by attorney in the United States Supreme Court on such day or days as may be appointed for the hearing of said cause in said Court and prosecute his said writ of error, and shall abide by and obey all orders
24b made by the United States Supreme Court in said cause, and shall pay any fine and costs imposed by the judgment of the District Court against him, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence against him shall be affirmed or the writ of error or appeal is dismissed; and if he shall appear for trial in the District Court of the United States for the Western Division of the Western District of Missouri on such day or days as may be appointed for a retrial by said District Court and abide by and obey all orders made by said Court provided the judgment and sentence against him shall be reversed by the United States Supreme Court; then the above obligation to be void, otherwise to remain in full force, virtue and effect. Warren Myers. J. E. Houston.

Approved Oct. 11/22. Arba S. Van Valkenburgh, Judge.

24c [Title omitted.]

Bond on Writ of Error.

Know all men by these presents:

That we, Bill Summers as principal, and J. E. Houston, as surety, are held and firmly bound unto the United States of America in the full and just sum of Five Thousand Dollars to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 16th day of September, in the year of our Lord, One Thousand Nine Hundred and twenty-two.

Whereas, lately, September 16, 1922, before the Honorable District Court, sitting within and for the Western District of Missouri at Kansas City, in a suit pending between the United States of America, plaintiff, and Bill Summers and Warren Myers, defendants, a judgment and sentence was rendered against the said Bill Summers, and the said Bill Summers has obtained a Writ of Error from the United States Supreme Court to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing the United States of America to be and appear in the United States Supreme Court thirty days from and after the date of said citation, which citation has been duly served.

Now, the condition of the above obligation is such that if the said Bill Summers shall appear either in person or by attorney in the

United States Supreme Court on such day or days as may be
24*d* appointed for the hearing of said cause in said court and prosecute his said writ of error, and shall abide by and obey all orders made by the United States Supreme Court in said cause, and shall pay any fine and costs imposed by the judgment of the District Court against him, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence against him shall be affirmed or the writ of error or appeal is dismissed; and if he shall appear for trial in the District Court of the United States for the Western Division of the Western District of Missouri on such day or days as may be appointed for a retrial by said District Court and abide by and obey all orders made by said court provided the judgment and sentence against him shall be reversed by the United States Supreme Court; then the above obligation to be void, otherwise to remain in full force, virtue and effect. J. E. Houston. W. H. Summers.

Approved Oct. 11/22. Arba S. Van Valkenburgh, Judge.

25 UNITED STATES OF AMERICA, *set:*

I, Edwin R. Durham, Clerk of the District Court of the United States for the Western Division of the Western District of Missouri, do hereby certify that the above and foregoing is a true, full and complete copy of the record, assignment of errors and all proceedings in the cause wherein The United States of America is plaintiff and Warren Myers and Bill Summers are defendants, as fully as the same appears on file and of record in my office, in accordance with præcipe filed herein and made a part hereof.

I further certify that the original Citation and Writ of Error are prefixed hereto and returned herewith.

Witness my hand as Clerk and the seal of said Court. Done at office in Kansas City, Missouri, this 6th day of October, A. D. 1922. Edwin R. Durham, Clerk U. S. District Court. [Seal of the United States District Court, Western Division, Western District, of Missouri.]

Endorsed on cover: File No. 29,264. W. Missouri D. C. U. S. Term No. 714. Warren Myers and Bill Summers, plaintiffs in error, vs. The United States of America. Filed November 27th, 1922. File No. 29,264.

No. 155

Supreme Court of the United States.

BILL SUMMERS AND WARREN MYERS,
PLAINTIFFS IN ERROR

VS

UNITED STATES OF AMERICA,
DEFENDANTS IN ERROR

No. 29264.

IN THE

Supreme Court of the United States.

BILL SUMMERS AND WARREN MYERS,
PLAINTIFFS IN ERROR,

VS.

UNITED STATES OF AMERICA,
DEFENDANTS IN ERROR.

STATEMENT OF FACTS.

The facts in this case are as follows: On the 22 day of June, 1922, the Honorable the District Court of the United States for the Western District of Missouri, sitting at Kansas City, at the suit of the St. Louis and San Francisco Railway Company granting an injunction against striking shopmen, among whom were these plaintiffs in error (defendants below) but these plaintiffs in error were not named in the bill of complaint and injunction, they being made a party thereto as belonging to a class. On the 8th day of September, 1922, an information was filed before the Judge of the Western District of Missouri at Kansas City, by the U. S. District Attorney charging that these defendants and each and both of them had violated said injunction by doing

certain acts prohibited therein. A warrant of arrest was issued and the defendants were arrested at Monett, Missouri, and carried to Kansas City a distance of two hundred miles. The information filed by the United States District Attorney in said court charging that these defendants had unlawfully assaulted an employee of the Frisco Railroad Company at Monett, in Barry County, Missouri, on the 27th day of July, 1922, contrary to and in violation of the terms of said injunction.

A map of Missouri showing limits of the different divisions will show that Barry County and Monett are within the Southwestern Division of said District Court which sits at Joplin and their trial was had over their objection at Kansas City in another and different (the Western) Division of the said District Court for the West District of Missouri (R. S. Sec. 540, J. C. Sec. 91. Acts of March 3, 1911 Sec. 91. 36 Stat. 1117, and Dec. 22, 1911 Ch. VIII. 37 Stat. 51, and being in Barne's Code as Sec. 854 Missouri).

The defendants seasonably raised the question of jurisdiction and at all times insisted that they should have had trial in the division in which it was charged they committed the offense, and the only question raised by the record in this case is, whether their motion to abate or transfer the case to Joplin within the proper division for trial should have been sustained.

The defendants raised the question by plea to the jurisdiction which was overruled and excepted to (Printed Record 8). By a motion for a new trial (Rec. 10) and by motion in arrest of judgment (Rec. 10) all of which were denied by the court and proper exceptions saved.

ABSTRACT OF THE RECORD.

The following is an abstract of the record so far as is necessary to present the question of jurisdiction.

Amended Information.

Comes now Charles C. Madison, United States Attorney for the Western District of Missouri, and upon leave of court, first had and obtained, files this amended information, and upon his official oath and upon the affidavits of Sim. P. Walker and William L. Weiss, which are hereto attached marked Exhibits A and B respectively (Rec. 3). (Allegations of the information as to the issuance of the injunction and service thereof, are omitted as unnecessary) on the 27th day of July, 1922 the said Warren Myers and Bill Summers, whose true first names are to affiant unknown, except as herein stated, had actual knowledge of said order of injunction and of its provisions therein contained and that on said 27th day of July, 1922, as aforesaid, the aforesaid injunctive order of this court was full force and effect and that on said 27th day of July, 1922, at or near the St. Louis, San Francisco roundhouse, the same being part of the shops of the said company and the property belonging to said company and included within the provisions of said injunctive order and at a point near the entrance thereof in Monett, Barry County, Missouri, and within the Western District of Missouri, and within the jurisdiction of this (Rec. 4) court, the said Warren Myers aid-

ing and assisting Bill Summers, and Bill Summers being at said time a striking employee and a member of one of the defendant orders enjoined, then and there (Rec. 5) being (matters not material to the question of jurisdiction omitted), and conduct as follows, to-wit:

That the said defendants, together with other persons unknown at the said time and place aforesaid did unlawfully, knowingly, wilfully and contemptuously congregate and loiter, and did then and there interfere with, stop and detain the said Sim P. Walker and William L. Weiss, employees of the said railway company in going from their daily work and did assault, beat, bruise and maim the said Sim P. Walker and William L. Weiss, and did further curse and abuse the said Sim P. Walker and William L. Weiss and by threats and coercion, did attempt to intimidate and influence the said Sim P. Walker and William L. Weiss to leave the employment of the said St. Louis, San Francisco Railway Company and to cease to work for said company, with intent to disobey, resist and violate the lawful orders and injunctive decree of this court, contrary to the authority and dignity of the court and the laws of the United States.

Wherefore, the said Charles C. Madison, United States Attorney as aforesaid, prays the court for an attachment forthwith against the said Warren Myers and Bill Summers, and thereunder they be brought before the court to show cause, if any they have, why they or either of them should not be punished as for contempt of this court, for and on account of the matters and things as

above set forth and be fined or imprisoned therefor. Chas. C. Madison, United States Attorney (Rec. 5).

(Verification omitted.)

Plea to Jurisdiction.

[Filed September 14, 1922.]

Now comes the above named respondent, and shows the court that this court is without jurisdiction to hear and determine this case in Kansas City, for the reason that the information filed herein shows that the alleged offense set forth and charged in said information is charged to have been committed in the County of Barry in the State of Missouri, which county is included in the territorial boundaries of the Southwestern (Joplin) Division of the United States Court for the Western District of Missouri; that by reason thereof the offense charged in the information filed in this case is triable at Joplin, and that this court sitting within and for the Kansas City Division of the Western District of the State of Missouri is without jurisdiction to hear and determine the same.

This respondent therefore prays that this case may be abated as being without the jurisdiction of this court; or, should the court hold that this is not ground for abatement, then that this case be transferred to the City of Joplin to be tried within the territorial limits within which the offense is alleged to have been committed. Sizer & Gardner and Allyn Smith, Attorneys for Respondent (Rec. 8).

Trial of Cause.

[September 14, 1922.]

This day come the defendants by their counsel and file plea to the jurisdiction of the court, which is taken up and considered, and the court after hearing the arguments of counsel and being fully advised in the premises doth overrule the same, to which ruling of the court the defendants, by their attorney, at the time except (Rec. 7).

[Title omitted.]

Verdict.

[Filed September 15, 1922.]

This day comes Charles C. Madison, United States Attorney, also come the defendants in their own proper persons and with their counsel, when comes the jury into open court and all answering present the trial is again proceeded with, and after hearing the argument of counsel and the instructions of the court the jury retire to consider of its verdicts.

Now comes the jury into open court with the following verdicts, to-wit:

We, the jury, find the defendant, Warren Myers, guilty as charged in the information herein. F. W. Mann, Foreman.

We, the jury, find the defendant, Bill Summers, guilty as charged in the information here. F. W. Mann, Foreman (Rec. 7).

[Title omitted.]

Motion for New Trial.

Now comes the above named defendants, and move the court to grant them a new trial and hearing, for that the court erred in refusing and overruling the application and demand of these defendants to transfer this case to the Southwestern Division of this District for trial as this court sitting within this Division is without jurisdiction to hear the charge alleged against them in the information in this case. Sizer & Gardner and Allyn Smith, Attorneys for Defendants (Rec. 10).

[Title omitted.]

[Filed September 16, 1922.]

This day comes Charles C. Madison, United States Attorney, also come the defendants in their own proper persons and with their counsel, and file motion for new trial herein, the same is argued and submitted to the court and the court being fully advised in the premises doth overrule the same, to which ruling of the court said defendants at the time except (Rec. 9).

Motion in Arrest of Judgment.

Now comes the respondent, Warren Myers, (and Bill Summers) and moves the court to arrest the judgment herein for the following reasons, to-wit:

The court had no jurisdiction to hear and determine this cause, for that the information filed herein shows the offense to have been committed in the Joplin (Southwestern) Division of the Western District of the State of Missouri, and this court was without jurisdiction to try said cause at Kansas City, outside the territorial lim-

its of said Division. Sizer & Gardner and Allyn Smith, Attorneys for Respondents (Rec. 10).

Thereupon the defendants file a motion in arrest of judgment, the same is taken up and considered by the court and the court after hearing the arguments of counsel and being fully advised in the premises doth overrule the same, to which action and ruling of the court the defendants at the time except.

And it appearing to the court that the said defendants were found guilty as charged in the information herein, by a jury on September 15th, 1922, and the United States Attorney having moved that sentence now be pronounced upon said defendants, said defendants were called upon to state reasons, if any they have, why sentence should not now be pronounced upon them, and none being stated and the court, being fully advised in the premises, fixes the punishment of the said defendants, Warren Myers and Bill Summers at imprisonment in the Johnson County, Missouri, jail at Warrensburg, for a period of six months from this date and that they pay a fine of one thousand dollars each, together with the costs of this action, and that commitments issue accordingly.

It is ordered by the court that the bond for appeal for each defendant be affixed in the sum of five thousand dollars (Rec 9).

Petition for Writ of Error.

The above named, George Myers, respondent and (Bill Summers) in the above entitled case, feeling ag-

grieved by the judgment and sentence of the court rendered and entered in the above entitled cause on the 16th day of August, 1922, does hereby pray a writ of error from said judgment to the Supreme Court of the United States of America for the reasons set forth in the assignments of error filed herein; and he prays that his writ of error be allowed and that citation be issued as provided by law; that a transcript of the record, proceedings and documents upon which said sentence and judgment were based, duly authenticated, be sent to the Supreme Court of the United States of America, under the rules of such court in such cases made and provided (Rec. 10).

And your petitioners, the appellants herein, further prays that the proper order be made relating to bail pending said writ of error as required by law. Sizer & Gardner and Allyn Smith, Attorneys for appellant.

Allowed Sept. 16/22. Arba S. Van Valkenburgh, Judge (Rec. 11).

Assignment of Errors.

Now comes the above named Bill Summers and Warren Myers and file the following assignments of error upon which they will rely in the prosecution of the appeal in the above entitled cause from the judgment and sentence of this Honorable Court on the 16th day of September, 1922.

1. The court erred in overruling the plea to the jurisdiction of this court, said plea being in effect that whereas the information filed herein shows that the alleged offense set forth and charged in the said informa-

tion is charged to have been committed in the County of Barry, and State of Missouri, which county is within the boundaries of the Southwestern (Joplin) Division of the United States District Court for the Western District of Missouri, and that by reason thereof, the offense charged in this information is triable in Joplin, and this court, sitting in and for the Kansas City division of the Western District of the State of Missouri, is without jurisdiction to hear and determine the same, to the overruling of which plea the jurisdiction, the defendants and each of them duly excepted and caused their exceptions to be noted of record.

2. The said United States District Court for the Western District of Missouri sitting at Kansas City erred in overruling a motion for a new trial filed by these appellants and respondents from the judgment in this case pronounced, said motion for a new trial being on the ground that this Honorable Court erred in refusing and overruling the application, and demand of these defendants to transfer this case to the Southwestern Division of this District for trial, as this court sitting within this division is without jurisdiction to hear the charge alleged aganst them in the information in this case.

3. That the United States District Court for the Western District of Missouri, sitting at Kansas City, erred in overruling by motion in arrest of judgment filed in this court, said motion in arrest of judgment being to the effect that this Honorable Court had no jurisdiction to hear and determine this cause or that the information filed herein shows the offense to have been committed in the County of Barry and State of Missouri, which said

county is not within the Western Division of the Western District of Missouri, and that this court is without jurisdiction to try said cause at Kansas City, outside the territory and limits of said division.

Wherefore, these respondents and each and both of them pray that the sentence and judgment be reversed and that the said United (Rec. 11)
against him shall be reversed by the United States Circuit Court of Appeals for the Eighth Circuit; then the obligation to be void, otherwise to remain in full force, virtue and effect. Warren Myers. J. E. Houston.

Approved Sept. 16/22. Arba S. Van Valkenburgh, Judge.

[Title omitted.]

Bond on Writ of Error.

Know all men by these presents:

That we, Bill Summers as principal, and J. E. Houston, as surety, are held and firmly bound unto the United States of America in the full and just sum of Five Thousand Dollars ($5,000.00), to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 16th day of September, in the year of our Lord, One Thousand Nine Hundred and Twenty-two (Rec. 12).

(Condition of bond omitted.)

(Signed) Bill Summers,
J. E. Houston.

Approved September 16/22. Arba S. Van Valkenburgh, Judge.

(The bond of Warren Myers was the same and is found on printed Record, page 13.)

ARGUMENT AND BRIEF OF PLAINTIFFS IN ERROR.

The injunction for the violation of which the plaintiffs in error (defendants below) was prosecuted and convicted was granted under the Clayton Act (Act of October 15, 1914, c. 323, Sec. 20, 38 Stat. 738, Sec. 1035, Barnes' Code).

And the prosecution was under the same Act (Sec. 22, 38 Stat. 738, Sec. 1039, Barnes' Code) and is purely a statutory contempt, and is in no manner governed by the practice of the High Court of Chancery of England.

We conceive that there is a vast difference in the matter of this statutory contempt, under the Act of Congress, and the "inherent Power" Doctrine of Contempt, as derived from the English Chancery Practice. Under which courts of law punished contempts committed *facie curie* at once, and in the Chancery Court contempt *facie curie* and those contempts arising from the failure to obey an affirmative mandatory order of the court (which was purely remedial in its nature) were punished without the intervention of a jury. All other contempts were usually punished by indictment, and the right of trial by jury was allowed, not *facie curie* nor remedial in their nature.

Mr. Justice Holmes, speaking for this court says, in discussing contempts:

"These contempts are infractions of the law, visited with punishment as such, * * * so truly are they crimes that it seems to be proved that in the early law they were 'punishable only by the usual Criminal procedure.' 3 Transactions of the Royal Historical Society, N. S. p. 147 (1885), and that at least in England, it seems that they may still be and preferable are tried in that way. See 7 Laws of England (Halsbury), 280 Subdiv. Contempt of Court (604)" *Gompers* v. *United States,* 233 U. S. 604.

Under the Clayton Act, the trial and proceedings, while being as for contempt, is a criminal proceeding, "and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information."

(Clayton Act. Sec. 22, 38 Stat. 738, Sec. 1029 Barne's Code.)

And at the trial the privilege of a trial by jury is a matter of election on the part of the defendant (last section, *supra*).

The following statutes we submit control the venue:

The Act of March 3, 1911, page 231 (Section 51; 36 Statute, 1101, provides except as provided by the five succeeding sections no person shall be arrested in one district for trial in another, in any civil action before the District Court (Barnes Code, 813). Act of March 3, 1911, page 231, Section 52, provides that when a state conducts more than one district a suit in the District Court thereof against a single defendant an inhabitant of such state must be brought in the district in which he resides. (Barnes Code, 814). Act of March 3, 1911, page 231, Section 53, provides—when a district contains

more than one division suit must be brought in the division where defendant resides. * * * and it also provides *"All prosecution for criminal offenses* shall be *within* the *division* of *such district where same is committed* (the italics are ours), unless the court, or the judge thereof, upon application of defendants, shall order the cause to be transferred for prosecution to another division of the district" (Sec. 815, Barne's Code).

And this court held in the Gompers case, even before the passage of the Clayton Act, that a prosecution as for contempt, for the violation of an injunction, was "a criminal offense."

Gompers v. *United States,* 233 U. S. 604.

It is the contention of the plaintiffs in error that under the provisions for trial under the Clayton Act, that their trial at Kansas City was illegal and without jurisdiction. These defendants in common with numerous others who were arrested for violation of that injunction were arrested at their homes, either without a warrant or without any proper showing that would cause a warrant to issue (they should all have been commenced by citation), carried to distant places in the district where it was difficult for them, among strangers, to make bond and forced to trial, as were these plaintiffs in error, defendants below, at a place distant from their homes where it was difficult to procure witnesses and their trial was under the most disadvantageous circumstances to them. Among the complaints made by the colonists against King George III in their Declaration of Independence was that

their citizens were arrested and transported across the seas to distant countries for trial in strange lands. Magna Charta says "* * * Every freeman shall have a trial only by the legal judgment of his peers * * * and we have in this case, as we deem it, one of the most flagrant violations of the spirit of the Declaration of Independence. As was said by one of the sages of this Bench in speaking for this court, that "The Declaration of Independence is the soul and spirit, while the Constitution is merely the body of our laws"; and in order to clearly interpret the Constitution and laws of the United States it is necessary to do so in the spirit of the Declaration of Independence. We might well leave this question without further argument, were it not for the fact that the contention of the prosecution, that in the Clayton Act, being the Act of October 15, 1914, page 323, Section 22, 38 Stat. 738, and being Section 1390 Barnes Code, it is provided: "If in the judgment of the court the alleged contempt be not sufficiently purged a trial shall be directed at a time and place fixed by the court." The contention of the prosecution was, and the Honorable District Court held that that clause gave the judge the power to direct the trial to be held at any place within the district, and not necessarily within the division of the district in which the offense was committed. and this holding was (presumably) based on the holding of the Court of Appeals of the Eighth Circuit, in the Brinkley case: That a defendant might be arrested in one district and tried for contempt in another district, for the

contempt of the District Court of such other district, into which he was carried.

While not admitting the correctness of the decision of the court in the Brinkley case, in fact we are of opinion that it was without warrant of law, and the doctrine therein announced not sound, that case is readily distinguishable in principle from the instant case.

In the Brinkley case, The M. & N. A. R. R. was in the hands of, and was being operated by a receiver appointed by the Honorable District Court for the Eastern District of Arkansas. And Brinkley was arrested for an unwarranted and contemptuous interference with the operation of the road by the receiver, the acts which were alleged to constitute the contempt, being committed in the Western District of Arkansas. And upon his arrest Brinkley was carried to Little Rock in the Eastern District, and there tried and convicted for the alleged contempt. *Brinkley* v. *United States,* 282 Fed. R. 244.

The Brinkley case was for contempt for interference with a receiver, and was within the practice of the High Court of Chancery. The instant case was a prosecution under the Clayton Act and is purely a statutory proceeding.

In the instant case the district in which the offense was committed was composed of three divisions, and the information alleged that the offense was committed in Barry County, at Monett (printed Record, 4, second line from the bottom of the page). Barry County is

in the Southwestern Division, and Kansas City where the trial was had is in the Western Division.

(Act March 3, 1911, c. 231, Barnes Code, 854.)

In the Brinkley case, a trial in the Western District of Arkansas would have been before a different judge, and in the instant case the judge of all the divisions is the same.

The Brinkley case was for an interference with the officer, and one of the instruments of the court, and constituted a contempt for an interference with what is usually denominated, "the due and orderly course of justice." The instant case is for a statutory contempt under the Cayton Act. The two cases are not analogous.

The contention of plaintiffs in error, defendants below, was that that clause (last above cited) merely gave the court the power for the convenience of parties to fix the time and place of trial, but that such place must be within the division in which the alleged contempt took place, and it is upon the decision of this question in the light of the statutes which we have cited that the judgment in this case depends, taking into consideration the complaints made at the time of the Declaration of Independence. The letter of the Declaration of Independence is as follows: * * * "He has combined with others to subject us to jurisdiction foreign to our constitution, and unacquainted by our laws; * * * and would deprive us in many ways of trial by jury."

"* * * transporting us beyond the seas to be tried for offenses."

This followed by the sixth amendment to the Constitution of the United States—and it may not be out of place to state that the first eleven amendments are in the nature of declarations of Bill of Rights, Article six, says. In all criminal prosecutions the accused shall be tried by a public and speedy trial by an impartial jury of the state and district where the crime shall have been committed, which district shall previously have been ascertained by law." And this is followed by the Act of Congress, for the purpose of hedging about and fully protecting the rights of the citizen. It was a right that was granted all Englishmen that he be tried by a jury of his peers, drawn from the Vicounage and we have Sevtions 51, 52 and 53 of the Judicial Code. Section 51 provides that in a civil case (if this be a civil case), a person shall not be arrested in one district for trial in another for any civil action. Section 52 provides that the trial shall be had within the district where a suit is commenced and Sec. 53 provides that where the district contains more than one division that all *crime and offences* which shall be tried within the division where the same is committed.

We insist that the letter and spirit of the Clayton Act gives the court no right to fix the time and place of trial outside the division in which the acts charged were committed, but must be read in conjunction with other statutes of the Law of the Land and that the judge's

power in fixing time and place of trial should be and is limited to the territorial division of the district. We submit the trial was without jurisdiction and must be reversed.

Respectfully submitted,

ALLYN SMITH,
Solicitor for Plaintiff in Error.

INDEX.

AUTHORITIES.

In the Supreme Court of the United States.

OCTOBER TERM, 1923.

WARREN MYERS AND BILL SUMMERS, plaintiffs in error, v. THE UNITED STATES OF AMERICA. } No. 158.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This case comes before the Court upon a writ of error to the United States District Court for the Western District of Missouri, to review a judgment of that court in a case wherein the plaintiffs in error were tried, convicted, and sentenced for contempt. It involves the jurisdiction of the District Court.

The proceeding was begun by an information filed by the United States Attorney in the District Court for the *Western Division* of the Western District of Missouri, which recited that—

> On the 22nd day of July, 1922, in a certain cause pending in the United States District Court for the Western Division of the Western

> District of Missouri, entitled "St. Louis, San Francisco Railway Company, Complainant, v. International Association of Machinists et al., Defendants, In equity No. 372," this Honorable Court issued an injunction against defendants in which injunction it is lawfully ordered that the said defendants in the above entitled cause and all persons engaged in strike formerly employed by complainant—

are enjoined not to picket the buildings or property of the complainant, not to loiter or congregate upon or about its premises, not to interfere in any manner with its employees going to and from their daily work, and not to interfere by violence or threats of violence with any person desiring to become an employee of the complainant. (R. 3–4.)

It is further averred that the defendants were members of one of the orders against which the injunction was directed, that they were striking employees of the complainant, that the injunction had been duly published, that the defendants had actual knowledge of it, and that on July 27, 1922, at Monett, Barry County, Missouri, within the Western District of Missouri, and within the jurisdiction of the court, they had unlawfully, wilfully, knowingly and contemptously committed contempt against the dignity and authority of the court. The acts of contempt consisted in assaulting two of the employees of the Railroad Company, and attempting by force and violence to influence them to leave its employ. (R. 4–5.)

The defendants were forthwith arrested, and were called for trial before the court in the *Western Division* of the District. A jury was impaneled which heard the case and returned a verdict of guilty. By their demurrer and plea to the jurisdiction, filed before trial, and by their motion for a new trial and motion in arrest of judgment, made thereafter (R. 7–10), the defendants challenged the jurisdiction of the court, because the County of Barry, in which the acts constituting the contempt were alleged to have been committed, was within the territorial boundaries of the *Southwestern Division* of the Western District of Missouri and not within the *Western Division* where they were called for trial. (R. 8.)

The assignment of errors filed (R. 11) raises the single question as to whether or not the United States District Court, sitting in the *Western Division* of the Western District of Missouri, has jurisdiction to try and to punish as a contempt the violation of an injunction issued by it in that Division when the acts constituting the contempt were committed in the *Southwestern Division*.

In support of their challenge to the jurisdiction of the trial court the plaintiffs in error urge: (1) That a contempt which may be tried and punished under Sections 21 and 22 of the Clayton Act is a statutory offense, and differs from one punishable under the inherent power of the court; and (2) That such a "statutory contempt" is a criminal offense, comparable in all respects with other crimes, and, under Section 53 of the Judicial Code, may be tried only in

that division of the district in which the acts constituting the contempt were committed.

The argument advanced in support of these propositions is more plausible than sound and seems to rest upon a too narrow view of the statute and the law.

ARGUMENT.

I.

This proceeding to punish for contempt, though it follow the procedure prescribed by the Clayton Act, is none the less an exercise of the inherent power of the court to enforce its decrees.

The power to punish for contempt is an inherent and indispensably necessary power of every court of record. It comes into being the moment the court is created and vested with judicial power. No express grant need be found either in constitution or statute, for wherever judicial power is given there is implied this means of making that power effective. To hear and determine causes, and to make orders, decrees, and judgments affecting the liberty or property of litigants, would be but an idle ceremony, if the power to enforce them were lacking. The process of judicial settlement would soon give way to negotiation and compromise, and the courts degenerate into mere boards of arbitration, if they had not the power to punish those who refuse obedience to their mandates. This is sustained by repeated decisions of this and of the several State courts.

More than a century ago, upon a certificate of division in opinion of the members of the Circuit

Court for Connecticut, whether that court had common-law jurisdiction in libel, this Court, in *United States* v. *Hudson*, 7 Cranch 32 (1812), had occasion to inquire fully into the inherent powers of the Federal Courts. In the course of the opinion Mr. Justice Johnson said (page 34):

> Certain implied powers must necessarily result to our courts of justice, from the nature of their institution. But jurisdiction of crimes against the State is not among those powers. To fine for contempt, imprison for contumacy, enforce the observance of order, etc., are powers which cannot be dispensed with in a court, because they are necessary to the exercise of all others; and so far our courts, no doubt, possess powers not immediately derived from statute; but all exercise of criminal jurisdiction in common-law cases, we are of opinion, is not within their implied powers.

A few years later in *Anderson* v. *Dunn*, 6 Wheat. 204 (1821), a case arose involving the power of the House of Representatives to punish for contempt. The decision in this case upon the principal question involved has been greatly modified, if not entirely overruled, by *Kilbourn* v. *Johnson*, 103 U. S. 168, 196–198. The following declaration of Mr. Justice Johnson, however, is still sound. He said, at page 227:

> * * * Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect and decorum in their presence, and submission to their lawful mandates, and as corollary to

> this proposition, to preserve themselves and their officers from the approach and insults of pollution.

In *Ex Parte Robinson*, 19 Wall. 505 (1873), an attorney at law, in open court, before the United States District Court for the Western District of Arkansas, had been guilty of conduct which that court deemed a contempt. The court ordered as a punishment that his name should be stricken from the roll of attorneys permitted to practice before it. Thereupon Robinson applied to this Court for a writ of mandamus, directed to the District Court, commanding it to restore his name to the roll of members of the Bar. The particular question there raised was whether under the law disbarment might be inflicted upon an attorney as a punishment for contempt, and this Court held that it could not. The case necessitated an inquiry into the nature of the power of the Federal courts to punish a contempt. In the course of the opinion, Mr. Justice Field said, at page 510:

> The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power.

In the historic case of *In Re Debs*, 158 U. S. 564, 594, the law relating to contempt was most carefully

considered and exhaustively treated. There this Court said:

> The power of a court to make an order carries with it the equal power to punish for a disobedience of that order, and the inquiry as to the question of disobedience has been, from time immemorial, the special function of the court. And this is no technical rule. In order that a court may compel obedience to its orders it must have the right to inquire whether there has been any disobedience thereof. To submit the question of disobedience to another tribunal, be it a jury or another court, would operate to deprive the proceeding of half its efficiency.

The opinion then quotes with approval from two cases decided by the State courts, as follows:

In *Watson* v. *Williams*, 36 Mississippi, 331, 341, it was said:

> The power to fine and imprison for contempt, from the earliest history of jurisprudence, has been regarded as a necessary incident and attribute of a court, without which it could no more exist than without a judge It is a power inherent in all courts of record, and coexisting with them by the wise provisions of the common law. A court without the power effectually to protect itself against the assaults of the lawless, or to enforce its orders, judgments, or decrees against the recusant parties before it, would be a disgrace to the legislation and a stigma upon the age which invented it.

And in *Cartwright's Case*, 114 Mass. 230, 238, the court said:

> The summary power to commit and punish for contempts tending to obstruct or degrade the administration of justice is inherent in courts of chancery and other superior courts, as essential to the execution of their powers and to the maintenance of their authority, and is part of the law of the land, within the meaning of the Magna Charta and of the twelfth article of our Declaration of Rights.

The present Chief Justice, when Circuit Judge, in the case of *Thomas* v. *Cincinnati, New Orleans & Texas Pacific Ry. Co.*, 62 Fed. 803, 823, said:

> If orders of the court are not obeyed, the next step is unto anarchy. It is absolutely essential to the administration of justice that courts should have the power to punish contempts, and that they should use it when the enforcement of their orders is flagrantly defied.

The Supreme Court of Indiana, in *Little* v. *State*, 90 Ind. 338, 339, said:

> Among the inherent powers of a court of superior jurisdiction is that of maintaining its dignity, securing obedience to its process and rules, protecting its officers and jurors from indignity and wrong, rebuking interference with the conduct of business, and punishing unseemly behavior. This power is essential to the existence of the court. Without the power to punish for contempt, no others could, as decided in *United States* v. *Hudson*,

> *supra*, be effectively exercised. There is no doubt that the power to punish for contempt is an inherent one, for, independent of legislation, it exists, and has always existed, in the courts of England and America. It is, in truth, impossible to conceive of a superior court as existing without such a power. The legislature may regulate the exercise of this power—may prescribe rules of practice and procedure, but it can neither take it away nor materially impair it.

These cases clearly announce the doctrine, from which we have found no departure in any of the adjudications of this Court, that the power to punish for contempt is inherent and indispensably necessary to every superior court, and that the judicial power to make an order implies the power to enforce it.

It is urged on behalf of the plaintiffs in error, however, that when Congress laid its hand upon this inherent power and legislated upon the subject of contempt, restricting somewhat the scope of the power, defining more clearly its character, prescribing the procedure to be followed or limiting the punishment to be inflicted, it destroyed the unique character of a contempt and transformed it into a "statutory offense" comparable in all respects with other crimes; and, in the instant case, subject to the same provisions as to venue. We find, however, that legislation upon the subject of contempt has not, heretofore, been so construed.

Section 17 of the original Judiciary Act of 1789 (1 Stat. 73, 83) provided:

> That all the said courts of the United States shall have power * * * to punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any cause or hearing before the same * * *.

Referring to this clause the Court in *Ex Parte Robinson*, 19 Wall. 505, 512, said:

> The enactment is a limitation upon the manner in which the power shall be exercised * * *.

By Act of March 2, 1831 (4 Stat. 487), Congress legislated further upon the subject of contempt, and in the same case, referring to that Act, this Court said (p. 510);

> But the power has been limited and defined by the Act of Congress of March 2, 1831. The act, in terms, applies to all courts; whether it can be held to limit the authority of the Supreme Court, which derives its existence and powers from the Constitution, may perhaps be a matter of doubt. But that it applies to the Circuit and District Courts there can be no question. These courts were created by act of Congress. Their powers and duties depend upon the act calling them into existence, or subsequent acts extending or limiting their jurisdiction. The Act of 1831 is, therefore, to them the law specifying the cases in which summary punishment for contempts may be inflicted. It limits the power of these courts in this respect to three classes of cases.

The provisions of these two acts of 1789 and 1831 were combined and reenacted in substantially the same words as Section 725 of the Revised Statutes, and later as Section 268 of the Judicial Code (36 Stat. 1163).

In referring to the power defined in Section 725 of the Revised Statutes, this court said in *In re Chiles*, 22 Wall. 157, 168:

> Such has always been the power of the courts both of common law and equity.

And of Section 268 of the Judicial Code it was said in *Toledo Newspaper Company* v. *United States*, 247 U. S. 402, 418–419:

> * * * there can be no doubt that the provision conferred no power not already granted and imposed no limitations not already existing. In other words, it served but to plainly mark the boundaries of the existing authority resulting from and controlled by the grants which the Constitution made and the limitations which it imposed. * * * The provision, therefore, conformably to the whole history of the country, not minimizing the constitutional limitations nor restricting or qualifying the powers granted, by necessary implication recognized and sanctioned the existence of the right of self-preservation; that is, the power to restrain acts tending to obstruct and prevent the untrammeled and unprejudiced exercise of the judicial power given by summarily treating such acts as a contempt and punishing accordingly.

In *Middlebrook* v. *State*, 43 Conn. 257, 267, where a statute of Connecticut relating to contempt and prescribing its punishment was under consideration, the court said:

> This is not so much a grant of power as the regulation of the exercise of an existing power.

If these enactments of Congress had been construed to destroy the inherent power of the courts and to substitute therefor a power to punish for a new, different, and wholly statutory crime, one important consequence would have been that trials for such offenses would of necessity be by jury. (*Constitution, Art. III, Sec. 2, Cl. 3; 6th Amendment.*) Yet from 1831 until the passage of the Clayton Act in 1914 no right of trial by jury in cases of contempt was recognized. (*Eilenbecker* v. *Plymouth County*, 134 U. S. 31; *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447; *In re Debs*, 158 U. S. 564, 594.) Nor is it recognized to-day, excepting in the narrow field of cases in which the Clayton Act specifically provides for it. (*Canoe Creek Coal Co.* v. *Christinson*, 281 Fed. 559.) We have found no indication in any of the opinions of this Court that it considered the Acts of 1789 and 1831 as having any other effect than that of defining and limiting an inherent and existing power of the courts.

Nor do we find anything in the purpose or language of the Clayton Act (Oct. 15, 1914, c. 323, 38 Stat. 730, 737–740) which warrants the conclusion that it created a "statutory" contempt. For some years prior to the passage of that Act the representatives

of organized labor had complained to Congress of what they alleged to be the abuse of equity powers by the Federal courts in awarding under the Sherman Act temporary injunctions without notice against large groups of laborers engaged in controversies with their employers concerning terms or conditions of employment, and in punishing those charged with disobedience without an adjudication of their guilt by anyone other than the judge who granted the injunction. They demanded that Congress curb this power by forbidding the issuance of injunctions without notice and by providing for trial by jury or by another court of those accused of contempt. The answer of Congress to these demands was embodied in the Clayton Act, a supplement to the Sherman Act, which clarified and extended the antitrust laws and made a number of provisions specifically relating to labor disputes.

It provided for restraining orders and preliminary injunctions, and laid down concisely the conditions precedent to the issuance of both. It fixed a brief time limit within which hearing must be had to continue any restraining order. (Sec. 17.) It required the complainant to furnish a bond (Sec. 18) and the court to be specific in the terms of its order (Sec. 19). It forbade the issuance of any order or injunction arising out of a dispute between employer and employee "unless necessary to prevent irreparable injury to property, or to a property right." It legalized an orderly strike, permitted peaceful persuasion of those remaining at work and assemblage of those

on strike, and sanctioned the primary boycott (Sec. 20).

It then provided (Sec. 21) that in a particular class of cases, where there was willful disobedience of any order or decree of the court and the act of disobedience was such "as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed," the procedure to punish such contempt should be as laid down in Section 22, which included a trial by jury "upon demand of the accused."

It made no change whatever in the substantive law. Contempt remained what it had been before. The Act merely prescribed a special procedure in the particular class of cases indicated. We can not find, either in the purpose or the language of Congress, any warrant for the proposition here advanced, that the Act created a "statutory" contempt. The Act is clearly in derogation of the inherent powers of the court, and if it were susceptible of two constructions, which we believe it is not, the same rule should be applied to Section 22 which was applied to Section 20, in *Duplex Co.* v. *Deering*, 254 U. S. 443, 471, where it was said:

> * * * it must be borne in mind that the section imposes an exceptional and extraordinary restriction upon the equity powers of the courts of the United States and upon the general operation of the antitrust laws, a restriction in the nature of a special privilege or immunity to a particular class, with corre-

> responding detriment to the general public; and it would violate rules of statutory construction having general application and far-reaching importance to enlarge that special privilege by resorting to a loose construction of the section * * *."

We think it clear that in the instant case the court, although following the procedure prescribed by the Clayton Act, was none the less exercising its inherent power to enforce its orders and decrees.

II.

Section 53 of the Judicial Code which fixes the venue of prosecutions for crimes and offenses does not apply to prosecutions for contempt.

Section 53 of the Judicial Code (36 Stat. 1101) provides, in part, as follows:

> All prosecutions for crimes or offenses shall be had within the division of such districts where the same were committed, unless the court, or the judge thereof, upon the application of the defendant, shall order the cause to be transferred for prosecution to another division of the district.

The plaintiffs in error point to *Gompers* v. *United States*, 233 U. S. 604, 610, as authority for the proposition that contempt is a crime, and conclude therefrom that the prosecution in this case is governed by the statutory provision just quoted. This reasoning, however, leaves out of account the peculiar characteristics which distinguish contempt from other offenses.

The broad general provisions of a Judicial Code are much like those of the Constitution, of which Mr. Justice Holmes said in *Gompers* v. *United States*, *supra*, that their significance "is to be gathered not simply by taking the words and a dictionary, but by considering their origin and the line of their growth," and, we may add, by considering the nature of the subject matter which is sought to be brought within them.

That contempt is analogous in many particulars to crime will not be disputed. This Court has so treated it in determining its jurisdiction to review (*Ex parte Kearney*, 7 Wheat. 38; *Hayes* v. *Fischer*, 102 U. S. 121), and in determining that the statute of limitations applicable to crimes shall apply to it (*Gompers* v. *United States*, 233 U. S. 604). But it is equally clear from the decisions that it differs from a crime in particulars which are numerous and important.

Contempts are generally classified as civil and criminal. (*Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324; *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 441; *In re Nevitt*, 117 Fed. 448.) Even those which are clearly criminal in character, however, differ from ordinary crimes. The following differences appear:

1. Criminal contempts are tried summarily and not after the regular course or manner of trying criminal offenses. (*Merchants Stock & Grain Co.* v. *Board of Trade of Chicago*, 201 Fed. 20, 26.)

2. There is no right of trial by jury, save as specifically provided by statute. Contempts are not "crimes" within the meaning of Article 3, Section 2, Clause 3 of the Constitution, which provides that: "The trial of *all crimes*, except in cases of impeachment, shall be by jury * * *." (*Eilenbecker* v. *Plymouth County*, 134 U. S. 31; *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447; *In re Debs*, 158 U. S. 564; *McCourtney* v. *United States*, 291 Fed. 497.) Nor are they "*criminal prosecutions*" within the meaning of the Sixth Amendment. (*United States* v. *Zucker*, 161 U. S. 475, 481.)

3. Courts of chancery, probate courts, courts of common pleas, and other courts having no criminal jurisdiction may nevertheless punish for criminal contempt. (*In re Debs*, 158 U. S. 564; *Middlebrook* v. *State*, 43 Conn. 257; *Cartwright's Case*, 114 Mass. 230; *Rapalje on Contempt* (1884), Sec. 3.)

4. For a criminal contempt the defendant may, without a waiver, and without his consent, be sentenced in his absence. (*Ex parte Terry*, 128 U. S. 289; *Middlebrook* v. *State*, 43 Conn. 257.)

5. An act which is a contempt of court and also a crime may be punished summarily and by indictment; and conviction or acquittal in one will not bar the other. Among the immunities found in the Fifth Amendment is this: "Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." Contempt has not been considered as an "*offense*" within the meaning of this provision. (*Chicago Directory Co.* v. *United States Directory Co.*, 123 Fed. 194; *Mer-*

chants' Stock & Grain Co. v. *Board of Trade of Chicago*, 201 Fed. 20; *O'Neil* v. *People*, 113 Ill. App. 195.) It is significant to observe in this connection that Section 25 of the Clayton Act provides: "Nor shall any such proceeding (prosecution for contempt) be a bar to any criminal prosecution for the same act or acts."

6. A defendant is not entitled to be confronted with the witnesses against him in open court. (*Merchants' Stock & Grain Co.* v. *Board of Trade of Chicago*, 201 Fed. 20, 29.)

7. It is doubtful whether the immunity from self-incrimination afforded by the Fifth Amendment to defendants in "any criminal case" will relieve a defendant in contempt from examination as a witness, so long as he is not required to incriminate himself in any matter other than the contempt inquired into. (*Id.*)

8. Finally, what is of particular importance in the case at bar—the court against which a contempt is committed has exclusive jurisdiction to punish it, and no change of venue can be allowed.

In re Debs, 158 U. S. 564, 595.
Ex parte Bradley, 7 Wall. 364, 372.
Binkley v. *U. S.*, 282 Fed. 244.
McGibbonney v. *Lancaster*, 286 Fed. 129.
Dunham v. *United States*, 289 Fed. 376.
Commonwealth v. *Shecter*, 250 Pa. 282, 290.
Penn v. *Messinger*, 1 Yeates (Pa.) 2.
Passmore Williamson's Case, 26 Pa. 9, 18.
People v. *County Judge*, 27 Cal. 151.
Phillips v. *Welch*, 12 Nev. 158.
Rapalje on Contempt (*1884*), Sec. 13.

Because of these many points of difference between criminal contempts and true crimes, this Court, while recognizing their criminal aspects, has held that contempt proceedings are neither civil nor criminal but are *sui generis*. (*O'Neal* v. *United States*, 190 U. S. 36; *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324.) *Gompers* v. *United States*, 233 U. S. 604, relied upon by the plaintiffs-in error, does not overrule the many cases we have cited which distinguished between contempt and crime.

We think that a review of all the cases will sustain the assertion that contempt has never been treated as a crime, nor have the words "crimes" or "offenses" been construed to embrace contempts where the effect of so doing would be to interfere with the inherent power of the courts. In the case of *Gompers* v. *United States*, supra, it was held that by analogy the statute of limitations applicable to crimes should be applied to proceedings for contempt. This could be done, however, without in any manner abridging the inherent power of the courts to hear and to adjudge guilty of contempt those persons who defied its orders. But to construe the statutes which fix the venue of criminal offenses so as to embrace contempts would very seriously curtail the power of the courts to enforce their orders.

While the jurisdiction of the District Court is ordinarily coextensive with the district, there are many instances in which its process runs and its decrees are effective beyond the district. Thus in equity, where the action is *in personam* and the operation of the

decree is upon the conscience of the party, a court has power to require a defendant to do or refrain from doing anything beyond the limits of its territorial jurisdiction which it might require to be done or omitted within the limits of such territory. (Williams on "Jurisdiction and Practice of Federal Courts," Sec. 2, page 24; *Muller* v. *Dows*, 94 U. S. 444.) A court of equity having jurisdiction over the person of a defendant may decree that he convey the title to property situated in a foreign jurisdiction, and the conveyance will pass the title of such defendant. (*Massie* v. *Watts*, 6 Cranch, 148; *Watkins* v. *Holman*, 16 Pet. 25.) In criminal causes the court may validly command the attendance of witnesses from any portion of the United States, and in civil causes, from its own or any other district, within the radius of a hundred miles of the place of trial. Executions upon a judgment for the use of the Government run throughout the United States.

If any of these writs be disobeyed whether within or without the district of the court which issued them, it is a contempt of that court, and that court alone must have the power to hear and determine the contempt if its power is to be effective. "Otherwise the case would present the anomalous proceeding of one court taking cognizance of an alleged contempt committed before and against another court, which possessed ample powers itself to take care of its own dignity and punish the offender." (*Ex parte Bradley*, 7 Wall. 364, 372.)

In *New Orleans* v. *Steamship Company*, 20 Wallace, 387, 392, this Court, quoting Mr. Justice Blackstone in Crosby's case, said:

> The sole adjudication for contempt, and the punishment thereof, belongs exclusively and without interfering to each respective court.

In *In re Debs*, 158 U. S. 564, 595, it was said:

> In order that a court may compel obedience to its orders it must have the right to inquire whether there has been any disobedience thereof. To submit the question of disobedience to another tribunal, be it a jury or another court, would operate to deprive the proceeding of half its efficiency. In the *Case of Yates*, 4 Johns. 314, 369, Chancellor Kent, then Chief Justice of the Supreme Court of the State of New York, said:
>
> "In the *Case of The Earl of Shaftesbury*, 2 St. Trials, 615; S. C. 1, Mod. 144, who was imprisoned by the House of Lords for high contempts committed against it, and brought into the King's Bench, the court held that they had no authority to judge of the contempt, and remanded the prisoner. The court, in that case, seem to have laid down a principle from which they never have departed, and which is essential to the due administration of justice. This principle that every court, at least of the superior kind, in which great confidence is placed, must be *the sole judge*, in the last resort, of contempts arising therein, is more explicitly defined and

> more emphatically enforced in the two subsequent cases of the *Queen* v. *Paty* et al. and of the *King* v. *Crosby*."

In *Penn* v. *Messinger*, 1 Yeates (Pa.), 2, where the judges refused to punish contempt of the process of another court, the court said that it "knew of no case where one court punished a contempt offered to another court."

In *Passmore Williamson's Case*, 26 Pa. 9, 18, it was said that "the authority to deal with an offender of this class belongs exclusively to the court in which the offense is committed; and no other court, not even the highest, can interfere with its exercise."

And in the more recent case of *Commonwealth* v. *Shecter*, 250 Pa. 282, 289, the Supreme Court of Pennsylvania said: "It is settled law that each court is the exclusive judge of contempts committed against its process."

It is obvious that the court which issues process or renders its judgment or decree is immediately interested in its observance, while to other coordinate courts it is of only remote concern. To make one court dependent for the enforcement of its authority upon another would soon destroy the independence and efficiency of all. And, furthermore, that court which has heard a cause and made its judgment or decree, is the one best able to judge when a contempt is purged or what punishment should be inflicted.

In view of the peculiar nature of contempt, we think it clear that a general statutory provision

relating to the venue of ordinary crimes and offenses should not be construed to include contempt and thus render punishment for disobedience beyond the boundaries of the district dependent upon the action of another coordinate court, unless there is some specific language which points unmistakably to such a legislative intent.

The question here raised has been recently considered and decided in favor of the contention now made by the Government in four cases before the Circuit Courts of Appeal for the Fifth and Eighth Circuits.

In *Binkley* v. *United States*, 282 Fed. 244 (C. C. A. 8th Cir.), the District Court for the Eastern District of Arkansas issued an order which amounted to an injunction restraining anyone from interfering with the operation of the Missouri & North Arkansas Railroad Company, whose property was then in the hands of a receiver appointed by that court. Binkley committed acts within the *Western* District of Arkansas, in violation of the order. He was arrested, heard by the District Court for the *Eastern* District and adjudged in contempt. He urged that the court was without jurisdiction because the acts complained of had been committed in the Western District. Both the District Court and the Circuit Court of Appeals, however, sustained the jurisdiction. The latter in its opinion said (p. 246):

> It must be borne in mind that the court of the Eastern District was the court in which the receivership matter was pending. The

offense, if offense at all, was a contempt of the court of the Eastern District, even though the acts constituting the contempt took place in the Western District.

In *McGibbony* v. *Lancaster*, 286 Fed. 129 (C. C. A. 5th Cir.), the District Court for the Western District of Louisiana appointed receivers for the Texas & Pacific Railway Co., and issued an injunction restraining anyone from interfering with their conduct of the roads. It was alleged that the defendant committed acts in the Eastern District of Texas which were in violation of the injunction. He was called for trial in the Western District of Louisiana and challenged the jurisdiction, but it was held that the court which had issued the injunction had jurisdiction to try and to punish the contempt.

In *McCourtney* v. *United States*, 291 Fed. 497 (C. C. A. 8th Cir.), an injunction was issued by the District Court for the Western Division of the Western District of Missouri, under the Clayton Act, to protect the property and business of the Saint Louis-San Francisco Railway Company. The defendant, who was charged with having violated the injunction in the *southern* division of the district, questioned the jurisdiction of the court to try him in the *western* division. Again the jurisdiction of the court which issued the injunction was sustained.

In *Dunham* v. *United States*, 289 Fed. 376 (C C A. 5th Cir.), the defendant was charged with having committed certain acts in the Lake Charles Division of the Western District of Louisiana, in violation of

an injunction issued by the court in the Shreveport Division of the same district. He was tried by the court for the Shreveport Division and contended that it was without jurisdiction. In this, as in the other cases, the jurisdiction of the court whose injunction had been disobeyed was sustained. The Circuit Court of Appeals in its opinion said (p. 378):

> If the place of the trial for a criminal contempt must be in the district where the acts constituting it were committed, then where such acts were committed in a different district than that of the court whose order had been contemned, such court would be powerless to deal punitively with the violation of its injunctive orders, and the trial and punishment of such contempt would have to be by a different court from that whose order had been defied. This would clearly be an alteration of the entire idea of a contempt; and in derogation of the power of a court to deal with violators of its orders. The essential act of contempt is the disrespect shown to the order of the court and the disobedience thereof. In this case that was a disrespect and disobedience of the orders of the court sitting at Shreveport, and was a contempt of the United States District Court at Shreveport, even if the acts evidencing the contempt took place in the Lake Charles division. The court at Shreveport was the court to deal with it.

The latter part of this quotation suggests the theory that a contempt is *actually committed* at the

place where the court which made the order sits, as it is there where the disobedience and defiance of authority take effect, though the acts which evidence them were committed elsewhere. Much might be said in support of this view. (See *Burton* v. *United States*, 202 U. S. 344, 389; *Lamar* v. *United States*, 240 U. S. 60, 66.) But we do not believe that is necessary to rely upon it to sustain the jurisdiction of the trial court in this case, for to us it seems clear that contempts are not embraced within the purview of general statutory provisions fixing the venue for ordinary crimes and offenses, and that Section 53 of the Judicial Code does not apply to such prosecutions.

CONCLUSION.

We respectfully submit that neither the Clayton Act, nor Section 53 of the Judicial Code, deprived the trial court of jurisdiction to hear and determine this case, and that the judgment of the District Court should be affirmed.

Respectfully submitted.

JAMES M. BECK,
Solicitor General.

GEO. ROSS HULL,
Special Assistant to the Attorney General.

DECEMBER, 1923.

MR. JUSTICE HOLMES concurs in the result.

MYERS ET AL. *v.* UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

No. 158. Submitted January 11, 1924.—Decided February 18, 1924.

1. The power to punish contempt to enforce obedience inheres in all courts, as essential to the performance of their functions. P. 103.
2. Contempt proceedings are *sui generis*,—neither civil actions nor criminal prosecutions, as ordinarily understood, nor criminal prosecutions within the Sixth Amendment. *Id.*
3. The contempts defined by § 21 of the Clayton Act (October 15, 1914, c. 323, 38 Stat. 730,)—disobedience of a lawful writ, etc., by

an act such as to constitute also a criminal offense,—are not, by the Act, declared criminal. P. 104.

4. Proceedings to punish such a contempt, committed by disobedience of an injunction, are within the jurisdiction of the District Court in the division where the main cause is pending, although the contempt was committed in another division of the district. Jud. Code, §§ 51, 52 and 53, do not control the venue. *Id.*

Affirmed.

ERROR to an order of the District Court sentencing the plaintiffs in error to fine and imprisonment for contumacious disobedience of an injunction.

Mr. Allyn Smith for plaintiffs in error.

The injunction was granted under the Clayton Act. The prosecution was under the same act, and is purely a statutory contempt, in no manner governed by the practice of the High Court of Chancery of England.

There is a vast difference between this statutory contempt and contempts under the "inherent power" doctrine. Under the English practice courts of law punished contempts committed *facie curiæ* at once; and, in the chancery court, contempts *facie curiæ* and those consisting of failures to obey mandatory orders were punished without the intervention of a jury. All other contempts were usually punished by indictment, and the right of trial by jury was allowed. *Gompers* v. *United States*, 233 U. S. 604.

The privilege of a trial by jury is a matter of election on the part of the defendant, under the Clayton Act. The venue is controlled by Jud. Code, §§ 51, 52, 53.

A prosecution for contempt for violation of an injunction is a criminal offense. *Gompers* v. *United States, supra.*

Section 22 of the act providing: "If . . . in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court," does not give the judge the

power to direct the trial to be held at any place within the district. *Binkley* v. *United States*, 282 Fed. 244, distinguished.

The Sixth Amendment guarantees in all criminal prosecutions a speedy trial by an impartial jury of the State and district where the crime shall have been committed. The Judicial Code enforces this.

Mr. Solicitor General Beck and *Mr. George Ross Hull*, Special Assistant to the Attorney General, for the United States.

I. This proceeding to punish for contempt, though it follow the procedure prescribed by the Clayton Act, is none the less an exercise of the inherent power of the court to enforce its decrees. *United States* v. *Hudson*, 7 Cr. 32; *Anderson* v. *Dunn*, 6 Wheat. 204; *Kilbourn* v. *Johnson*, 103 U. S. 168; *Ex parte Robinson*, 19 Wall. 505; *In re Debs*, 158 U. S. 564; *Watson* v. *Williams*, 36 Miss. 331; *Cartwright's Case*, 114 Mass. 230; *Thomas* v. *Cincinnati, etc., Ry. Co.*, 62 Fed. 803; *Little* v. *State*, 90 Ind. 338.

It is urged, however, that when Congress laid its hand upon this inherent power and legislated upon the subject of contempt, restricting somewhat the scope of the power, defining more clearly its character, prescribing the procedure to be followed or limiting the punishment to be inflicted, it destroyed the unique character of a contempt and transformed it into a "statutory offense" comparable in all respects with other crimes; and, in the instant case, subject to the same provisions as to venue. We find, however, that legislation upon the subject of contempt has not, heretofore, been so construed. Judiciary Act, 1789, 1 Stat. 73, 83; Act March 2, 1831, 4 Stat. 487, 510; Rev. Stats., § 725; Jud. Code, § 268; *Ex parte Robinson*, 19 Wall. 505; *In re Chiles*, 22 Wall. 157; *Toledo Newspaper Co.* v. *United States*, 247 U. S. 402; *Middlebrook* v. *State*, 43 Conn. 257.

From 1831 until the passage of the Clayton Act in 1914 no right of trial by jury in cases of contempt was recognized. *Eilenbecker* v. *Plymouth County*, 134 U. S. 31; *Interstate Commerce Comm.* v. *Brimson*, 154 U. S. 447; *In re Debs*, 158 U. S. 564. Nor is it recognized today, excepting in the narrow field of cases in which the Clayton Act specifically provides for it. *Canoe Creek Coal Co.* v. *Christinson*, 281 Fed. 559. We have found no indication in any of the opinions of this Court that it considered the Acts of 1789 and 1831 as having any other effect than that of defining and limiting an inherent and existing power of the courts. Nor do we find anything in the purpose or language of the Clayton Act which warrants the conclusion that it created a "statutory" contempt.

It made no change in the substantive law; but merely prescribed a special procedure in the particular class of cases indicated. The act is in derogation of the inherent powers of the court, and cannot be extended by construction. *Duplex Co.* v. *Deering*, 254 U. S. 443.

II. Section 53 of the Judicial Code, which fixes the venue of prosecutions for crimes and offenses, does not apply to prosecutions for contempt.

Contempt is analogous to crime. *Ex parte Kearney*, 7 Wheat. 38; *Hayes* v. *Fischer*, 102 U. S. 121; *Gompers* v. *United States*, 233 U. S. 604.

But it differs from crime in numerous and important particulars.

Contempts are generally classified as civil and criminal. *Bessett* v. *Conkey Co.*, 194 U. S. 324; *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418; *In re Nevitt*, 117 Fed. 448. But even those which are clearly criminal in character, differ from ordinary crimes.

1. Criminal contempts are tried summarily. *Merchants Stock Co.* v. *Chicago Board of Trade*, 201 Fed. 20.

2. There is no right of trial by jury, save as specifically provided by statute. Contempts are not "crimes"

within Art. 3, § 2, cl. 3 of the Constitution, which provides that: "The trial of all crimes, except in cases of impeachment, shall be by jury . . ." *Eilenbecker* v. *Plymouth County*, 134 U. S. 31; *Interstate Commerce Comm.* v. *Brimson*, 154 U. S. 447; *In re Debs*, 158 U. S. 564; *McCourtney* v. *United States*, 291 Fed. 497. Nor are they "criminal prosecutions" within the meaning of the Sixth Amendment. *United States* v. *Zucker*, 161 U. S. 475.

3. Courts having no criminal jurisdiction may nevertheless punish for criminal contempt. *In re Debs*, 158 U. S. 564; *Middlebrook* v. *State*, 43 Conn. 257; *Cartwright's Case*, 114 Mass. 230; Rapalje, Contempt, 1884, § 3.

4. The defendant may, without a waiver or consent, be sentenced in his absence. *Ex parte Terry*, 128 U. S. 289; *Middlebrook* v. *State*, 43 Conn. 257.

5. An act which is a contempt of court and also a crime may be punished summarily and by indictment; and conviction or acquittal in one will not bar the other. *Chicago Directory Co.* v. *United States Directory Co.*, 123 Fed. 194; *Merchants Stock Co.* v. *Chicago Board of Trade*, 201 Fed. 20; *O'Neil* v. *People*, 113 Ill. App. 195. See also § 25 of the Clayton Act.

6. A defendant is not entitled to be confronted with the witnesses against him in open court. *Merchants Stock Co.* v. *Chicago Board of Trade*, 201 Fed. 20.

7. It is doubtful whether the immunity from self-incrimination afforded by the Fifth Amendment to defendants in "any criminal case" will relieve a defendant in contempt from examination as a witness, so long as he is not required to incriminate himself in any matter other than the contempt inquired into. *Id.*

8. Finally, what is of particular importance in the case at bar—the court against which a contempt is committed has exclusive jurisdiction to punish it, and no change of venue can be allowed. *In re Debs*, 158 U. S. 564; *Ex*

parte Bradley, 7 Wall. 364; *Binkley* v. *United States*, 282 Fed. 244; *McGibbony* v. *Lancaster*, 286 Fed. 129; *Dunham* v. *United States*, 289 Fed. 376; *Commonwealth* v. *Shecter*, 250 Pa. St. 282; *Penn* v. *Messinger*, 1 Yeates, 2; *Passmore Williamson's Case*, 26 Pa. St. 9; *People* v. *County Judge*, 27 Cal. 151; *Phillips* v. *Welch*, 12 Nev. 158; Rapalje, Contempt, 1884, § 13; *New Orleans* v. *Steamship Co.*, 20 Wall. 387.

Because of these points of difference this Court, while recognizing their criminal aspects, has held that contempt proceedings are neither civil nor criminal, but are *sui generis*. *O'Neal* v. *United States*, 190 U. S. 36; *Bessette* v. *Conkey Co.*, 194 U. S. 324.

To construe the statutes which fix the venue of criminal offenses so as to embrace contempts would seriously curtail the power of the courts to enforce their orders.

The question here raised has been recently considered and decided in favor of the contention now made by the Government. *Binkley* v. *United States*, 282 Fed. 244; *McGibbony* v. *Lancaster*, 286 Fed. 129; *McCourtney* v. *United States*, 291 Fed. 497; *Dunham* v. *United States*, 289 Fed. 376.

Mr. Justice McReynolds delivered the opinion of the Court.

Plaintiffs in error challenged the jurisdiction of the court below—United States District Court, Western Division of the Western District of Missouri—to try and punish them for disobeying its order, upon the ground that the contumacious acts occurred in another division of the district. Only the question of jurisdiction is here.

An information charged that plaintiffs in error wilfully disobeyed the injunction lawfully issued in equity cause, *St. Louis, San Francisco Railway Company, Complainant*, v. *International Association of Machinists, et al., Defendants*, pending in the Western Division of the Western Dis-

trict of Missouri, by attempting, within the Southwestern Division of the same district, to prevent certain railroad employees from continuing at work. The order ran against men on strike, and the cause is treated as one within the purview of the Clayton Act (October 15, 1914, c. 323; 38 Stat. 730). Sections 21, 22, 24 and 25 of that act are set out below.[1]

Counsel for plaintiffs in error maintain that ordinary contempts punishable by courts of equity without trial by jury differ radically from the "statutory contempt" here disclosed, which, under the Clayton Act, must be dealt with as a criminal offense. And they insist that §§ 51, 52

[1] Sec. 21. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

Sec. 22. That whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however*, That if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable

and 53, Judicial Code, control the venue when such "statutory contempt" is alleged.

Section 51 provides that, with certain exceptions, "no person shall be arrested in one district for trial in another, in any civil action before a district court." . . . Section 52. "When a State contains more than one district, every suit not of a local nature, in the district court thereof, against a single defendant, inhabitant of such State, must be brought in the district where he resides; but if there are two or more defendants, residing in different districts of the State, it may be brought in either district, and a duplicate writ may be issued against the defendants, directed to the marshal of any other district in which any defendant resides." . . . Section 53. "When a district

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bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000, nor shall such imprisonment exceed the term of six months: *Provided*, That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show

contains more than one division, every suit not of a local nature against a single defendant must be brought in the division where he resides; but if there are two or more defendants residing in different divisions of the district it may be brought in either division. . . . All prosecutions for crimes or offenses shall be had within the division of such districts where the same were committed, unless the court, or the judge thereof, upon the application of the defendant, shall order the cause to be transferred for prosecution to another division of the district."

None of the cited Code sections makes specific reference to contempt proceedings. These are *sui generis*—neither civil actions nor prosecutions for offenses, within the ordinary meaning of those terms—and exertions of the power inherent in all courts to enforce obedience, something they must possess in order properly to perform their functions. *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, 326.

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cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

Sec. 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

Sec. 25. That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act.

To disobey a judicial order is not declared criminal by the Clayton Act. It recognizes that such disobedience may be contempt and, having prescribed limitations, leaves the court to deal with the offender. While it gives the right to trial by jury and restricts the punishment, it also clearly recognizes the distinction between "proceeding for contempt" and "criminal prosecution." "No proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts." § 25.

The Clayton Act says nothing about venue in contempt proceedings; leaves it as theretofore. The power of the court below to issue the enjoining order is not questioned. By disobeying the order, plaintiffs in error defied an authority which that tribunal was required to vindicate. It followed established practice, as modified by the statute; and we think the objections to its jurisdiction are unsubstantial.

The following cases are in point: *Eilenbecker* v. *District Court of Plymouth County*, 134 U. S. 31, 35, *et seq.*; *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447, 489; *In re Debs*, 158 U. S. 564, 594, 596, 599; *Bessette* v. *W. B. Conkey Co.*, *supra*, pp. 326, 327; *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 441, 450; *Binkley* v. *United States*, 282 Fed. 244; *McGibbony* v. *Lancaster*, 286 Fed. 129; *Dunham* v. *United States*, 289 Fed. 376; *McCourtney* v. *United States* 291 Fed. 497.

Gompers v. *United States*, 233 U. S. 604, does not support the claim that the challenged contempt proceedings amounted to prosecution for a criminal offense within the intendment of § 53, Judicial Code. While contempt may be an offense against the law and subject to appropriate punishment, certain it is that since the foundation of our government proceedings to punish such offenses have been

regarded as *sui generis* and not "criminal prosecutions" within the Sixth Amendment or common understanding.

The judgment below must be affirmed.